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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,691	02/18/2004	F. Thomson Leighton	03142 00011(37)	8950
50086 7590 09/24/2007 LAW OFFICE OF DAVID H. JUDSON 15950 DALLAS PARKWAY SUITE 225 DALLAS, TX 75248			EXAMINER DAILEY, THOMAS J	
			ART UNIT 2152	PAPER NUMBER
			MAIL DATE 09/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/779,691

Applicant(s)

LEIGHTON ET AL.

Examiner

Thomas J. Dailey

Art Unit

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/18/2004</u> .   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claim 1 is pending in this application.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites "the internet" (line 1). This lacks antecedent basis.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leighton et al (US Pat. 6,107,703), hereafter "Leighton" in view of Kenner et al (US Pat. 6,421,726), hereafter "Kenner."

7. As to claim 1, Leighton discloses a method for content delivery over the internet, comprising:

establishing a content delivery network at network edge points (column 13, lines 38-40), the content delivery network comprising a set of content servers for hosting web resources (column 17, lines 23-26);

continuously monitoring traffic conditions on the internet (column 10, lines 10-11) to generate a set of network performance metrics

selected from a group of metrics consisting essentially of: link latency, packet loss rates at routers, available link capacity, network hop distance, AS path information, and test page download times;

using the aggregated network performance metrics to construct a network map (column 9, lines 65-67 and column 10, lines 58-60) that identifies the cost of communication between IP blocks and the content servers (column 10, lines 10-11); and

responsive to a client browser request for a web resource, using the network map to identify a given one of the set of content servers from which the resource may be obtained (column 20, lines 25-31).

But, Leighton does not explicitly disclose that the network performance metrics are selected from a group of metrics including link latency, packet loss rates at routers, available link capacity, network hop distance, AS path

information, and test page download times and that the performance metrics are aggregated together to identify the cost of communication between IP blocks and the content servers.

However Kenner teaches a method of aggregating the performance metrics to identify the cost of communication between IP blocks and the content user (column 11, lines 33-36; column 13, lines 19-21; column 22, lines 30-32).

Furthermore, Kenner discloses the performance metrics include network hop distance (column 11, lines 25-28), test page download times (column 12, lines 4-7), and available link capacity (column 12, lines 21-26).

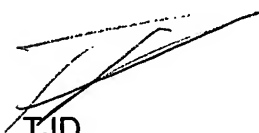
Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Leighton and Kenner in order to allow the aggregation of various performance metrics to determine the optimal cost between IP blocks and the content servers thereby improving the integrity of Leighton's system by increasing the accuracy of monitored data.


### ***Conclusion***

8. For additional prior art made of record and not relied upon and considered pertinent to applicant's disclosure see attached Notice of References Cited, Form PTO-892.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
TJD  
9/4/2007

  
BUNJOB JAROENCHONWANIT  
SUPERVISORY PATENT EXAMINER  
9/17/07